



#6 DAK (5)  
34535-A-PCT-USA-A (070050.1866)  
PATENT

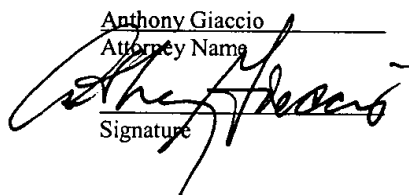
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Paul B. Fisher Examiner : A. Marschel  
Serial No. : 09/991,452 Group Art Unit: 1631  
Filed : November 21, 2001  
For : USE OF A MELANOMA DIFFERENTIATION ASSOCIATED  
GENE (MDA-7) FOR INDUCING APOPTOSIS OF A TUMOR  
CELL

**PETITION TO CORRECT SMALL ENTITY STATUS**  
**PURSUANT TO 37 C.F.R. § 1.28(c)**

RECEIVED  
NOV 14 2002  
OFFICE OF PETITIONS

I hereby certify that this paper is being deposited with the United States Postal Service via First Class Mail on November 7, 2002 and is addressed to: Assistant Commissioner of Patents, Washington, D.C., 20231.

Anthony Giaccio  
Attorney Name  
  
Signature

39,684  
Registration No.  
November 7, 2002  
Date of Signature

Box Petition  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. § 1.28(c), applicant herein petitions to correct the small entity status of this application. This application was filed on November 21, 2002 as a continuation of parent application Serial No. 09/251,124 ("the '124 application") and relied on the small entity claim made in the parent '124 application. However, during the

NY02:398085.2

1

11/14/2002 TTRAN1 00000045 09991452

01 FC:1001 740.00 OP  
02 FC:1460 130. OP

Adjustment date: 11/14/2002 TTRAN1  
11/27/2001 00000032 09991452  
01 FC:201 -370.00 OP

pendency of the parent '124 application, the status changed from small entity to large entity. Therefore, applicant hereby petitions to change the status of the instant application from small entity to large entity, and is paying the difference in fees herewith from the time the status changed to the present.

Status as a small entity was declared in good faith and the basic filing fee for a small entity was paid in good faith. On April 16, 1999, in the parent '124 application prior counsel of record for applicant submitted a Verified Declaration of Small Entity Status which accurately claimed small entity status. Receipt of this Declaration was acknowledged by the Patent Office on April 26, 1999. When the present continuation application was filed by present counsel of record on November 21, 2002, the accompanying transmittal indicated that the small entity status declared in the prior non-provisional application was desired in the present application.

It was recently discovered by present counsel of record that a licensee of this technology was a wholly-owned subsidiary of a company that grew in size from less than 250 employees as of March 2, 2000 to more than 525 employees as of December 31, 2000. As such, Applicant desires to pay the previously paid basic filing fee as a large entity. Accordingly, applicant herein itemizes, according to 37 C.F.R. § 1.28(c)(2), the deficiency in fee payments:

Fees Erroneously Paid as Small Entity	Amount Paid	Date Paid	Fees Owed as Non-Small Entity	Deficiency Amount Owed
Basic Filing Fee	\$370.00	November 21, 2001	\$740.00	\$370.00
<b>TOTAL</b>				<b><u>\$370.00</u></b>

Applicant herein encloses a check for \$500.00, which represents the combined deficiency amount calculated above and the required petition fee of \$130.00 set forth under 37 C.F.R. § 1.17(h). The Commissioner is hereby authorized to charge payment of fees or to credit any overpayment associated with this communication to Deposit Account No. 02-4377. Two copies of this paper are enclosed.

Applicant respectfully requests that this Petition to Correct Small Entity Status under 37 C.F.R. § 1.28(c) be granted.

Respectfully submitted,

BAKER BOTTS, L.L.P.



Lisa B. Kole, M.D., Ph.D.  
PTO Reg. No. 35,225

Anthony Giaccio  
PTO Reg. No. 39,684

Attorneys for Applicant  
(212) 408-2500

Enclosures